



DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2023-HQ-0016]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers (USACE), Department of the Army, Department of Defense (DoD).

ACTION: 60-day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the U.S. Army Corps of Engineers announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Headquarters, U.S. Army Corps of Engineers, 441 G Street NW Washington, DC 20314-1000, ATTN: Mr. Matt Wilson, or call 202-761-5856.

SUPPLEMENTARY INFORMATION:

TITLE; ASSOCIATED FORM; AND OMB NUMBER: Jurisdictional Determination Forms and Aquatic Resources Delineation Forms; ENG Forms 6116 (0-9), 6245-6250, 6281 (1-2); OMB Control Number 0710-0024.

NEEDS AND USES:

Jurisdictional Determination Forms

The U.S. Army Corps of Engineers (Corps), through its Regulatory Program, regulates certain activities in waters of the United States (WOTUS), pursuant to Section 404 of the Clean Water Act (CWA). WOTUS are defined under 33 CFR part 328. The Corps also regulates certain activities in “navigable waters of the United States” pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). The Corps has authorized its district engineers to issue formal determinations concerning the applicability of the CWA or the RHA to tracts of land. (See 33 CFR 320.1(a)(6)). These formal determinations concerning the applicability of the CWA or RHA to tracts of land are known as “jurisdictional determinations.” Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the Corps to help implement Section 404 of the CWA (33 U.S.C. 1344) and Sections 9 and 10 of the RHA (33

U.S.C. 401, et seq.). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes.

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) issued a final rule to amend the final “Revised Definition of ‘Waters of the United States’” rule, published in the *Federal Register* on January 18, 2023. This final rule conforms the definition of “waters of the United States” to the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. Parts of the January 2023 Rule are invalid under the Supreme Court’s interpretation of the Clean Water Act in the *Sackett* decision. Therefore, the agencies have amended key aspects of the regulatory text to conform it to the Court’s decision. The conforming rule, "Revised Definition of 'Waters of the United States'; Conforming," published in the *Federal Register* and became effective on September 8, 2023.

As a result of ongoing litigation on the January 2023 Rule, the agencies are currently implementing the January 2023 Rule, as amended by the conforming rule, in 23 states, the District of Columbia, and the U.S. Territories. In the other 27 states and for certain parties, the agencies are interpreting "waters of the United States" consistent with the pre-2015 regulatory regime and the Supreme Court's decision in *Sackett* until further notice.

This information collection request thus implements the collections of information associated with the Corps’ implementation of the 2023 Rule, as amended, and the pre-2015 regime consistent with *Sackett*. The Corps intends to implement the 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett* using two forms, which consist of the Preliminary Jurisdictional Determination Form (PJD Form) and a “JD Request Form.” Under the most recent regulatory regimes (the September 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett*), the Corps has elected to use a Memorandum for Record (MFR) instead of a JD “form” to document the basis of its jurisdictional decisions under those two regimes. While we

are including four separate AJD Forms in this package, including (1) the “pre-2015 regime (a.k.a., “Rapanos”)” AJD Form, (2) The pre-2015/Rapanos “dry land” AJD Form, (3) the 2020 NWPR AJD Form, and (4) the January 2023 Rule AJD Form, none of those four AJD Forms are currently in use. Even though these four forms are not currently in use, they are included in this collection for historical purposes. Therefore, there a total of six JD forms (the PJD Form, the JD Request Form, and the 4 historical AJD Forms) in this collection.

Aquatic Resource Delineation Datasheets

In order for the Corps to determine the amount and extent of aquatic resources at a site, the Corps must geographically delineate aquatic resources in accordance with established regulations, policy, and guidance. The aquatic resource delineation datasheets fall into two main categories: (1) the ENG 6119 (0-9) series, which are our automated wetland determination data sheets (ADS) and (2) the Ordinary High Water Mark (OHWM) field identification datasheet.

To delineate wetlands, the Corps uses the 1987 Corps of Engineers Wetlands Delineation Manual (Corps Manual) and the most current applicable regional supplements. There are ten wetland data sheets in total but these really are one single collection that is split into 10 regional sub-forms. The ADSs streamline the information collection process by incorporating reference material and analytical processes directly into the form, which is provided as a Microsoft Excel document rather than the PDF form included in the regional supplements. Additionally, the ADSs automate data analysis using information input by the respondent (e.g., the “dominance test” for wetland vegetation), which will reduce the time and effort required to complete these processes.

Non-tidal, non-wetland waters of the United States, which are defined in 33 CFR part 328, must be delineated to the extent of the ordinary high water mark (OHWM), which is defined at 33 CFR 328.3(c)(4) and 33 CFR 329.11(a)(1). Regulatory Guidance Letter (RGL) 05-05 provides guidance on identification of OHWM. In 2022, the Corps released a draft Engineer Research

and Development Center Technical Report, “National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams” (Draft National Manual), which is the first national manual that provides and describes indicators and a methodology which will help improve consistency in the identification and delineation of the OHWM by (1) providing consistent definitions of OHWM indicators; (2) outlining a clear, step-by-step process for identifying the OHWM using a Weight-of-Evidence approach; and (3) providing a datasheet for logging information at a site. As part of the development of the Draft National Manual, the Corps developed a Data Sheet (ENG 6250) for facilitating documentation of the OHWM.

AFFECTED PUBLIC: Individuals or households.

Request for Corps Jurisdictional Determination (ENG 6247)

ANNUAL BURDEN HOURS: 2,815.

NUMBER OF RESPONDENTS: 16,891.

RESPONSES PER RESPONDENT: 1.

ANNUAL RESPONSES: 16,891.

AVERAGE BURDEN PER RESPONSE: 10 minutes.

Approved Jurisdictional Determination Forms (ENG 6245, 6248, & 6281)

ANNUAL BURDEN HOURS: 1,670.

NUMBER OF RESPONDENTS: 668.

RESPONSES PER RESPONDENT: 1.

ANNUAL RESPONSES: 668.

AVERAGE BURDEN PER RESPONSE: 150 minutes.

Rapanos Dry Land AJD Form (ENG 6246)

ANNUAL BURDEN HOURS: 61.

NUMBER OF RESPONDENTS: 243.

RESPONSES PER RESPONDENT: 1.

ANNUAL RESPONSES: 243.

AVERAGE BURDEN PER RESPONSE: 15 minutes.

Preliminary JD Form (ENG 6249)

ANNUAL BURDEN HOURS: 625.

NUMBER OF RESPONDENTS: 1,500.

RESPONSES PER RESPONDENT: 1.

ANNUAL RESPONSES: 1,500.

AVERAGE BURDEN PER RESPONSE: 25 minutes.

Ordinary High Water Mark Data Sheet (ENG 6250)

ANNUAL BURDEN HOURS: 19,990.

NUMBER OF RESPONDENTS: 39,980.

RESPONSES PER RESPONDENT: 1.

ANNUAL RESPONSES: 39,980.

AVERAGE BURDEN PER RESPONSE: 30 minutes.

Automated Wetland Data Sheets (ENG 6116 (0-9))

ANNUAL BURDEN HOURS: 48,692.

NUMBER OF RESPONDENTS: 48,692.

RESPONSES PER RESPONDENT: 2.

ANNUAL RESPONSES: 97,384.

AVERAGE BURDEN PER RESPONSE: 30 minutes.

Total

ANNUAL BURDEN HOURS: 73,853.

NUMBER OF RESPONDENTS: 107,974.

ANNUAL RESPONSES: 156,666.

FREQUENCY: On Occasion.

Dated: October 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

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